

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I, II, III, and IV and the)	PROPOSED ADOPTION AND
amendment of ARM 4.12.3104 and)	AMENDMENT
4.19.101 through 4.19.106 pertaining)	
to hemp)	

TO: All Concerned Persons

1. On April 9, 2019, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on April 5, 2019, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail agr@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I HEMP VARIETY (1) Applicants must inform the department of what varieties they are planting and the location of each variety by sending the information to the department.

(2) The department will send the full Montana State Hemp License for the year after receiving variety information from the applicant.

(3) The department will utilize a four-category system, found in [NEW RULE II], to determine the amount of testing required and frequency of random sampling.

(4) Persons distributing hemp seeds for planting must comply with the Montana Agricultural Seed and Patented Plant Material Act, excluding exemptions listed in 80-5-130(4), MCA.

(5) Clones of industrial hemp plants may be approved for commercial production of industrial hemp. Clones are in the same category as their parent plant. Clones must comply with the Montana Disease, Pest and Weed Control Act, and additional documentation may be required for interstate shipments.

(6) The department will publish an annual list of approved varieties for planting in the current license season by March 1 each year.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Although industrial hemp is no longer a DEA regulated controlled substance, the growing of hemp and hemp products, including seed for planting, is still regulated by state and federal regulations. Additionally, most forms of industrial hemp, including planting seeds and the plants grown from seed, are indistinguishable from marijuana without laboratory testing. To help assure that only approved industrial hemp seeds are distributed for the industrial hemp program, the department needs to review the varieties being proposed for planting in Montana's hemp program. This includes any amount of seed and propagative plant parts (clones).

An element of consumer protection is provided by these regulations which sufficiently monitor seed quality, differentiate between hemp and marijuana plants, and comply with the 2018 Farm Bill and state plan pending approval by the USDA.

New Rule I (Hemp Variety) is an updated version of New Rule I (Hemp Planting Seed) proposed in MAR Notice No. 4-19-254 and published on page 75 of Issue No. 2 of the 2019 Montana Administrative Register. While revisions were made to this new rule, the main principles remain the same. The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

Economic Impact: Additional resources are necessitated by department staff to review new seed varieties as well as ensure compliance with Montana's hemp regulations and the 2018 Farm Bill. Although it is difficult to determine precisely, the department estimates this work will require 2.0 FTE. The cost for personnel services based on two Environmental Science Specialist positions is \$134,729 annually.

NEW RULE II HEMP VARIETY CATEGORIES (1) Categories will be as follows: Category A are varieties formally approved by the department, Category B are certified varieties approved by other states or countries at a level equivalent to the department, Category C are all other hemp varieties that an applicant reasonably believes will not produce a plant with over 0.3 percent THC at any time prior to harvest and are not in Category D, and Category D includes all varieties forbidden by any federal law or regulation or added by rule by the department because of its inability to consistently produce hemp.

(a) Category A: CFX-1, CFX-2, CRS-1, Canda, Carmagnola, Carmagnola Select, Fedora 17, Grandi, Joey, Katani, Picolo.

(b) Category B: Altair, Alyssa, Angie, Anka, Armanca, Asso, B 11, Beniko, Bialobrzieskie, C S, CanMa, Cannakomp, Carma, Carmen, Carmaleonte, Chameleon, Codimono, CHA, CHY, Crag, Dacia Secuieni, Debbie, Delores, Delta 405, Deltallosa, Denise, Diana, Dioca 88, Deni, ESTA-1, Eco Aglegra, Eco Nebliss, Eletta Campana, Epsilon 68, Elite, Fasamo, Fedrina 74, Felina 32, Felina 34, Ferimon, Fibrol, Fibranova, Fibrante, Fibriko, Fibrimon 24, Fibrimon 56, Finola, Futura 75, Georgina, GranMa, Glecia, Giana, Helena, Henola, Hiration, IDA-0103, Ivory, Judy, Jutta, KC Bonusz, KC Dora, KC Virtus, KC Zuzana, Kompolti, Kompolti Hibrid TC, Kompolti Sargaszaru, Laura Secord, Lipko, Lovrin 110, Marcell, Marina, Markant, Martha, Medicine Mother, Monoica, Nadine, Novosadska, Petera,

Quida, Rajan, Ratza, Santhica 23, Santhica 27, Santhica 70, Secuieni Jubileu, Silesia, Silistrenski, Silvana, Succesiv, Szarvasi, Tiborszálási, Tisza, Tygra, UC-RGM, USO 14, USO 31, Uniko B, VC Star, Victoria, Villanova, Wojko, X-59 (Hemp Nut), Yvonne, Zenit, Zolotonosha 11, Zolotonosha 15.

(c) Category C: All other hemp varieties that an applicant reasonably believes will not produce a plant with over 0.3 percent THC at any time prior to harvest and is not listed in Category D.

(d) Category D: Any varieties forbidden by any federal law or regulation.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: In order to create a regulatory framework now and for the future, a system is necessary to both exclude some varieties (Category D) and define some varieties that require less testing (Categories A and B) by the department. This list will be modified as more information becomes known about hemp. The department will publish and/or update a categorized list of varieties by March 1 each year, per New Rule I(6).

New Rule II was not included in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2) which necessitates this proposal, MAR Notice No. 4-19-255. The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated with New Rule II.

NEW RULE III PROHIBITION ON GROWING BOTH HEMP AND MEDICAL MARIJUANA (1) A licensed hemp grower in Montana may not grow both hemp and medical marijuana at the same location unless one is grown indoors and the other is grown outdoors or both are grown in separate buildings at the same location.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: The ability to cross-pollinate could create situations in which entire hemp crops would have to be disposed of to comply with state and federal laws. This rule is a reasonable compromise to prevent that circumstance.

New Rule III was not included in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2) which necessitates this proposal, MAR Notice No. 4-19-255. The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated with New Rule III.

NEW RULE IV HEMP SAMPLING (1) The department may allow a grower to self-sample if the department believes the grower can successfully follow the protocol and it is in the best interest of the department to have the grower do so.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: To run a cost-effective program, it may be appropriate, in some instances, such as high travel distance situations with low risk hemp, to have the grower perform sampling.

New Rule IV was not included in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2) which necessitates this proposal, MAR Notice No. 4-19-255. The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

Economic Impact: New Rule IV will help control sampling costs, but it is impossible to calculate an exact impact due to the hemp industry being new to Montana.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

4.12.3104 LABELING FOR SEED KIND AND VARIETY (1) Agricultural seeds ~~shall~~ must be labeled with kind and variety information as stated in this rule:
(a) the following agricultural seeds ~~shall~~ must be labeled to show kind and variety:

- (i) barley;
 - (ii) bean, field;
 - (iii) beet, field;
 - (iv) canola;
 - (v) corn, field;
 - (vi) ~~oats~~ hemp;
 - (vii) ~~peas, field~~ oats;
 - (viii) ~~safflower~~ peas, field;
 - (ix) ~~soybean~~ safflower;
 - (x) ~~sunflower~~ soybean; and
 - (xi) ~~wheat~~ sunflower; and
 - (xii) wheat.
- (b) through (2) remain the same.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: Although industrial hemp is no longer a DEA regulated controlled substance, the growing of hemp and hemp products, including seed for planting, is still regulated by state and federal regulations. Varietal characteristics can affect seed quality, end-product use, and the amount of regulatory oversight required. To

make sound purchasing decisions, industrial hemp purchasers must know the kind and variety. Knowing the kind and variety allows the Department of Agriculture to review and determine approval for seed varieties as outlined in the pending USDA-state plan. All agricultural seeds require labeling as outlined in the Montana Agricultural Seed Act.

Proposed amendments to ARM 4.12.3104 in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2) are identical to these proposed amendments. The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated with the addition of kind and variety as a requirement to a hemp seed.

4.19.101 DEFINITIONS (1) "Clone" means an organism developed asexually from another and genetically identical to it, such as a group of genetically identical plants produced by vegetative propagation, including but not limited to cutting, grafting, or division.

~~(1)(2)~~ "Hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-nine tetrahydrocannabinol (THC) concentration of not no more than 0.3 percent on a dry weight basis.

~~(3)~~ "Location" means a single location as determined by the Director.

~~(2)(4)~~ "Pilot program" "Montana State Hemp Program" means a program to grow hemp under the regulation of the Montana Department of Agriculture for the purposes of complying with federal law.

~~(3) "Seed repository" means the storage area for those approved varieties of hemp available for sale by the department.~~

~~(4) "Specialty variety" means a variety of hemp that the department has not already made an approved variety or does not currently plan to import for that growing year.~~

(5) "State hemp license" means a license to grow hemp that shows the holder is in compliance with Montana state hemp laws. The holder is also responsible for obeying all applicable federal and tribal regulations.

(6) "Testing" means a testing for the amount of THC, pesticides, or other tests for legal compliance of departmental or federal regulations.

AUTH: 80-18-107, MCA

IMP: 80-18-101, 80-18-102, 80-18-103, 80-18-106, 80-18-107, 80-18-110, 80-18-111, MCA

Reason: Definition additions are necessary to clarify the intent of the new rules.

Minor changes were made to ARM 4.19.101 in this proposal that were not made in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2). Additional amendments are necessary to clarify hemp definitions before the growing season. The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated with amendments to ARM 4.19.101.

4.19.102 APPLICATION FOR HEMP LICENSE MONTANA STATE HEMP PROGRAM LICENSE (1) An applicant must:

(a) provide the information required by state law for a hemp license on the form provided by the department;

(b) apply to the department for participation in the program by May 1 unless the department extends the application deadline;

~~(b)(c)~~ pay all fees as established by rule; and

~~(e)(d)~~ consent to entrance of their property by the department to inspect their hemp fields.

(2) If the applicant is not a single individual, then all proper filings with the Secretary of State must be current and in good order.

~~(3) The applicant, including all corporate officers, must be fingerprinted at a law enforcement agency. The law enforcement agency, not the applicant, must send the fingerprint sheet to the department.~~

~~(4)(3)~~ Licenses will expire on the last day of ~~December~~ April following of the year that they are ~~the license is~~ issued for.

~~(5) Renewals do not require new fingerprinting unless the department requests it or if the corporate officers have changed.~~

~~(6)(4)~~ The licensee must also provide all material required under 80-18-106, MCA.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Changing the license year from January through December to May through April and the license application due date to May 1 aligns better with the hemp growing season. Doing so allows growers more time for seed purchasing and planting decisions. License application and location information submitted by growers in May instead of January will improve the process for submitting information to the department. The fingerprinting requirement is addressed in Montana law and is not required in these rules.

Amendments to ARM 4.19.102 are identical to those proposed in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2). The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated with amendments to ARM 4.19.102.

4.19.103 PILOT MONTANA STATE HEMP PROGRAM (1) An applicant to the pilot program Montana State Hemp Program must:

~~(a) have a Montana hemp license;~~

~~(b)(a)~~ not be forbidden from participating by a federal agency and agree to a criminal background check;

~~(e)(b)~~ meet any additional requirements that the ~~DEA~~ USDA or FDA places on the department for the continuation of the program;

~~(d)(c)~~ only obtain seed through the program or program-approved methods not grow Category D varieties listed in [NEW RULE II]; and

~~(e)~~ pay a pilot program participation program fee;

~~(f)~~ if they wish to have the department import a hemp specialty variety, they must pay the specialty variety fee as well; and

~~(g)(d)~~ have applied apply to the department for participation in the program by ~~January 31st~~ May 1 unless the department extends the application deadline.

(2) and (3) remain the same.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Pilot program rules remain in effect until the USDA approves Montana's state hemp plan. The pilot program name is renamed the Montana State Hemp Program.

No changes were made to (1)(a) through (f) in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2). In this proposal, the department amends (1)(a) to include applicant agreement to a criminal background check, removes DEA requirements and replaces with USDA or FDA requirements per the 2018 Farm Bill in (1)(b), and amends (1)(c) to clarify prohibited varieties. Amendments to the application deadline are identical in both proposals. The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated.

4.19.104 FEES (1) The fee for a ~~state hemp license~~ Montana State Hemp License is ~~\$50~~ \$450.

~~(2) The fee for participation in the state pilot program is \$400.~~

~~(3) The special variety fee of the pilot program is \$600.~~

(2) The fee for location registration is \$400 per location of a single owner plus:

(a) \$5 per acre or partial acre outdoors; or

(b) \$0.35 per 1,000 square feet indoors.

(3) The total fees under (2) may not exceed \$10,000.

~~(4) If official sampling is requested by a licensed hemp grower, the fee for providing such a service will be consistent with ARM 4.12.1811.~~

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Section 80-18-107, MCA requires fees be commensurate with department activities for the implementation of the hemp program. Applicants are required to pay \$450 to participate in the Montana State Hemp Program and receive a state license. The acres of commercial hemp grown in Montana increased from zero in 2016 to 21,600 in 2018. Additional revenue is needed to fund the department's increased activities under the 2018 Farm Bill.

MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2) proposed minor changes to ARM 4.19.104 with no associated fiscal impact. In this proposal, the department includes new fees in (2)(a) through (c) and strikes (3) and (4). The department will not adopt the rules proposed in MAR Notice No. 4-19-254 but intends to adopt the rules proposed in MAR Notice No. 4-19-255.

Economic Impact: \$450 is the current licensing fee amount. Section 80-18-107, MCA requires fees be commensurate with department activities for the implementation of the hemp program.

In 2018, 21,600 acres of commercial hemp were grown on approximately 200 Montana field locations and 6 indoor locations of approximately 400 sq. ft. per location. Using 2018 numbers, this proposed rule change would result in an additional \$190,400.84 in revenue to the department. Assumptions are listed below:

200 field locations x \$400 = \$80,000
21,600 acres x \$5 = \$108,000
6 indoor locations x \$400 = \$2,400
2,400 sq. ft. total x \$0.35 = \$0.84

This is consistent with a two-person unit and the travel, testing, and training required by this commodity.

4.19.105 LAB TESTING FEES (1) The department will charge any licensee or law enforcement agency \$250 per test for THC levels of a plant.

(2) Any lab approved by DPHHS for THC testing for medical marijuana may be used by hemp growers for THC testing.

~~(2)~~(3) The department may approve third party testing providers.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Amendments were made to lab testing fees to bring consistency in Montana testing options available for MDA and DPHHS.

Amendments to ARM 4.19.105 were not proposed in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2), which will not be adopted by the department. The department intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated.

4.19.106 PENALTIES OR REVOCATIONS (1) After notice to the licensee, the department may suspend a license and start an administrative hearing under MAPA for permanent revocation.

(2) The department may suspend or terminate the hemp license for any violation of county, state, or federal law. This will be done in a manner consistent with Section 297 of The Agricultural Marketing Act of 1946 as amended (2018).

(3) The department may reinstate the license if good cause is shown and a reinstatement fee is paid. The reinstatement fee is ~~\$450~~ \$50 for the state hemp license and \$400 for the state pilot program Montana State Hemp Program license.

AUTH: 80-18-107, MCA

IMP: 80-18-101, 80-18-103, 80-18-106, 80-18-107, MCA

Reason: Amendments create consistency in language with the 2018 Farm Bill and the current federal legal situation of hemp.

Amendments to ARM 4.19.106 were not included in MAR Notice No. 4-19-254 (page 75, 2019 Issue No. 2), which will not be adopted by the department. The department intends to adopt the rules proposed in MAR Notice No. 4-19-255.

No fiscal impact is associated.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., April 15, 2019.

6. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State March 5, 2019.